APPENDIX

No. Sp. Ramsey County Per Curiam

81-1048

Michael and Joyce McKee,

Appellants,

vs.

The County of Ramsey and its Department of Taxation, and the State of Minnesota,

Respondents.

Endorsed. Filed March 5, 1982. John McCarthy, Clerk. Minnesota Supreme Court.

Considered and decided by the court en banc without oral argument.

OPINION

PER CURIAM.

Plaintiffs sought declaratory and injunctive relief claiming that Ramsey County and the State of Minnesota have violated their right to freedom of religion by compelling them to pay property taxes, a small portion of which tax money is used to fund sterilization, contraception and state-authorized abortion. They also claimed that defendant's acts constitute an establishment of religion in violation of the United States and state constitutions.

The Ramsey County District Court, in a well-reasoned memorandum order, dismissed the action for failure to state a claim upon which relief could be granted. Minn. R. Civ. P. 12.02(5). We affirm that memorandum order in its entirety. The action of the state and county does not violate the Establishment Clause, *Harris v. McRae*, 448 U.S. 297, 319 (1980), nor does it burden the free exercise of religion, *Autenrieth v. Cullen*, 418 F.2d 586 (9th Cir. 1969), *cert. denied*, 397 U.S. 1036 (1970), under either the federal or the state constitution.

Affirmed.

STATE OF MINNESOTA
Office of Clerk of Supreme Court
St. Paul, Minn.

81-1048

Michael and Joyce McKee,

Appellants,

vs.

The County of Ramsey and its Department of Taxation, et al.,

Respondents.

April 12, 1982

SIR:

You will please take notice that on this date the following order was entered in the above entitled cause:

ORDERED, that the petition for reargument herein be and the same hereby is denied and stay vacated.

IT IS FURTHER ORDERED that no attorneys fees are allowed pursuant to the provisions of Rule 140, Rules of Civil Appellate Procedure.

Yours respectfully,

John McCarthy
Clerk Supreme Court

STATE OF MINNESOTA — DISTRICT COURT
County of Ramsey — Second Judicial District

Michael and Joyce McKee,

Plaintiffs,

vs.

The County of Ramsey and its Department of Property Taxation, and the State of Minnesota,

Defendants.

MEMORANDUM ORDER

(File No. 450614)

Defendants jointly move to dismiss Plaintiffs' complaint on the basis of Rule 12B(6) MRCP, asserting that Plaintiffs' complaint fails to state a claim upon which relief may be granted. The matter was originally heard on May 10, 1981.

Plaintiff, Michael McKee, appeared personally and by counsel, Raymond J. Kempe, Esq. Defendant, State of

Minnesota, appeared by William P. Donohue, Esq., Special Assistant Attorney General, and Defendant Ramsey County appeared by Janet R. Stenborg, Esq., Assistant Ramsey County Attorney. Thereafter, by separate order, the Minnesota Civil Liberties Union and Kathleen M. McManus, Esq., its attorney, was allowed to file an Amicus brief. All written materials have been submitted; the last memorandum, a reply brief by Plaintiffs, reached the Court on July 30, 1981.

The Court has considered all of the materials, as well as the arguments of the parties, and concludes that Defendants' motions must be granted.

The issue, simply stated, arises out of Plaintiff-property owners and county citizens' seriously held religious and moral beliefs proscribing their participation in "abortion, sterilization and contraception." They contend that public monies which support or encourage these practices, insofar as Plaintiffs are compelled to contribute to them by way of taxation, are being used illegally. They contend on the one hand that these acts "establish religion" in violation of the United States and State Constitutions, and alternatively they argue that the State and County's use of tax monies to which Plaintiffs must contribute prevents them from practicing their own religion and moral beliefs. They seek a declaration that Defendants have infringed on their rights and an injunction preventing Defendants from assessing and collecting real property taxes from Plaintiffs so long as any general revenue of the Defendants is expended for "promotion of non-necessary (elective) abortion, sterilization and contraception; or, so long as Plaintiffs' tax payment is not segregated from taxes paid on terms which require Raamsey County to respond by pro-

moting sterilization, contraception and abortion as such." (sic)

Plaintiffs' memoranda outline in detail their allegations and contentions. These arguments, however, although expanded to a degree, have already been considered by the Minnesota Supreme Court in *McKee v. Likins*, 261 N.W. 2d 566 (1977). That decision granted Plaintiffs some relief as to the procedure of rule making, but, specifically affirmed the trial court's holding contrary to Plaintiff's position relative to the issue of elective, non-therapeutic abortions. In that decision, the trial court stated among other things:

> ". . . this court concludes that the Plaintiff's religious objections to the use of tax monies to pay for abortions in no way impedes or prohibits the Plaintiff from the exercise of his religion to the extent of denying him his first amendment freedom. . ."

Defendants' motion to dismiss here, acknowledges all of the "facts" contained in Plaintiffs' complaint, conditioning them only on the proviso that Plaintiffs' contribution to the services they abhor is de minimis. In any event, Defendants contend the *Likins* case, supra, is legally dispositive of the abortion claim and impliedly dispositive of the claims regarding contraception and sterilization. Additionally, Defendants contest Plaintiffs' argument that the free exercise of Plaintiffs' religious rights is offended by their being forced to pay property taxes. Defendants argue persuasively that the payment of taxes has no nexus to religious practice as tax payments are commingled and spent based only upon a preadopted budget. This very issue has been litigated in response to similar claims made by tax-

payers morally or politically offended by the Viet Nam war. See e.g. *Autenrieth v. Cullen*, 418 F.2d 586, (9th Cir. 1969); *Groves v. CIR*, 579 F.2d 392, 6th Cir. (1978).

Similarly, Plaintiffs' argument that being forced to pay taxes has the effect of establishing a religion in violation of their constitutional rights is without merit. Defendants point out that the U.S. Supreme Cour in *Harris v. McRae*, 100 S.Ct. 2671 (1980) upheld the "Hyde Amendment", a legislative restriction on abortion funding consistent with Catholic tenets. This action met the challenge of an argument that it constituted an establishment of religion; accordingly, it can hardly be argued that the absence of designated purposes for tax dollars collected can be equated with prohibited establishment.

In sum, the Plaintiffs misconstrue authorized taxation as being for the purpose of promoting abortion, and contend that even if they indirectly participate as "cooperators" or taxpayers, their rights are violated. Such is not the law, as no specific tax receipts from any specific taxpayer can be designated for any such unique purpose. In summary, the State has the power to levy and collect taxes for declared public purposes, and Plaintiffs cannot simply refuse to pay taxes based on their abhorrence to one of these legislatively decreed purposes. "If every citizen could refuse to pay all or part of his taxes because he disapproved of the government's use of the money on religious grounds, the ability of the government to function could be impaired or even destroyed. . . There are few, if any, governmental activities to which some person or group might not object on religious grounds." *Autenrieth v. Cullen*, 418 F 2d 586 at 588-9, supra.

Based upon the foregoing,

IT IS ORDERED Defendants' motion for an order dismissing Plaintiffs' complaint is granted.

DATED: August 12, 1981.

/s/ SIDNEY P. ABRAMSON
Judge of District Court

STATE OF MINNESOTA
County of Ramsey

DISTRICT COURT
Second Judicial District

Michael and Joyce McKee,

Plaintiffs,

vs.

The Count of Ramsey and its Department of Property Taxation, and the State of Minnesota,

Defendants.

AMENDED COMPLAINT

For their complaint plaintiffs state and allege as follows:

I.

This is an action for declaratory and injunctive relief pursuant to Minnesota Statutes Chapter 555. By this action plaintiffs claim their rights to freedom of religion and of conscience, secured by the Constitution of the United States and of the State of Minnesota, are infringed by the actions of Ramsey County and its tax collection officials and the State of Minnesota.

II.

Plaintiffs are husband and wife and are the joint tenant property owners of their homestead located at 2721 Chisholm Street, North St. Paul, County of Ramsey and State of Minnesota, legally described as:

> Lot Eight (8), Block Seven (7), Dalton Park, according to the recorded plat thereof on file and of record, Ramsey County, Minnesota

III.

Defendants assert that real property taxes are due against said homestead.

IV.

Plaintiffs assert that a portion of those property taxes financially support immoral actions because they are used to reimburse physicians and health care institutions, and non-profit associations for promoting non-necessary abortion, sterilization and contraception. These payments are made through the Ramsey County Welfare Department under the Medical Assistance Program authorized by Title XIX of the Social Security Act, 42 U.S.C. §1396 et seq. and Minn. Stat. Chapter 256B, and through the Ramsey County Board under various social programs.

V.

The general revenues of Ramsey County, and therefore some of plaintiffs' tax monies, are expended in part by the Ramsey County Welfare Department under the Medical Assistance Program and in part by the Ramsey County Board under programs to subsidize organizations that are

dedicated in principle to promotion of non-necessary (elective) abortion, sterilization and contraception. Therefore, some part of said general revenues are paid to physicians and institutions for promoting non-necessary abortion, contraceptions and sterilization.

VI.

Plaintiffs believe that they have been and will continue to be injured by being required to support the act of abortion which they believe constitutes the taking of human life, and by supporting the acts of sterilization and contraception which they believe constitute interference with divinely prescribed laws governing the transmission of human life. Plaintiffs believe that it is intrinsically wrong to support abortion, sterilization, and contraception as such. They believe that to pay in response to a government proposal to promote elective non-necessary abortion, sterilization and contraception is to support these actions as such.

VII.

Plaintiffs strongly believe that they must not condone or support abortion, sterilization and contraception, when they are invited to support them as such, and not merely in effect through their support for other items specified in County's proposal to taxpayer. Their religious and moral convictions are deeply offended by the knowledge that the general revenues of this County, including any tax dollars, are being used to pay for the elective abortions, contraception and sterilization of eligible medical assistance recipients residing in Ramsey County, and to pay in support of organizations dedicated in principal to promotion of non-necessary abortion, sterilization and contraception.

VIII.

Defendants are compelling plaintiffs to commit acts contrary to their moral and religious beliefs and convictions, namely to pay property taxes when they are specifically advised under terms of their contract with the county that a portion thereof is being used to pay for the county's services as a promoter of non-necessary (elective) sterilizations and contraception and abortion. Plaintiffs are thereby deprived of the right to the free exercise of their religion as guaranteed by the United States Constitution. By their actions defendants have also infringed on plaintiffs' rights guaranteed by Article I, Section 16 of the Minnesota Constitution. Alternatively, defendants' acts constitute the establishment of religion in violation of the United States and State Constitutions.

WHEREFORE, plaintiffs pray for judgment as follows:

1. Declaring that the defendants have infringed plaintiffs' rights secured by the Constitution of the United States of America and the State of Minnesota by requiring plaintiffs to pay real property tax dollars in exchange for the county's efforts in promoting non-necessary abortion, contraception and sterilization under the Medical Assistance Program, thereby compelling plaintiffs to participate in an action which is immoral in that it expresses consent to support the taking of human life. Expression of such consent, as included in this immoral act of payment, is repugnant to plaintiffs' religious and moral beliefs;

2. Enjoining defendants from assessing and collecting real property taxes from plaintiffs so long as any portion of the general revenues of Ramsey County are expended by the Ramsey County Welfare Department under the

Medical Assistance Program for promotion of non-necessary (elective) abortion, sterilization and contraception; or, so long as plaintiffs' tax payment is not segregated from taxes paid on terms which require Ramsey County to respond by promoting sterilization, contraception and abortion as such.

3. For such other and further relief as the court may deem appropriate and just.

/s/ RAYMOND J. KEMPS
Attorney at Law
One Signal Hills
West St. Paul, Minnesota 55118
457-5585

STATE OF MINNESOTA — DISTRICT COURT
County of Ramsey — Second Judicial District

Michael and Joyce McKee,

Plaintiffs,

vs.

The County of Ramsey and its Department of Property Taxation,

Defendants.

ANSWER OF DEFENDANTS COUNTY OF RAMSEY AND ITS DEPARTMENT OF PROPERTY TAXATION

Defendants County of Ramsey and its Department of Property Taxation, for their answer to the complaint herein, admit, deny and allege as follows:

1. Except as hereinafter admitted and/or qualified, deny each and every allegation contained in said complaint.

2. Admit the allegations contained in paragraphs II and III of the complaint.

3. Are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations pertaining to plaintiffs' religious and moral beliefs and convictions as contained in paragraphs I, IV, VI, VII and VIII of the complaint and, therefore, deny same and put plaintiffs to their strict proof thereof.

AFFIRMATIVE DEFENSES

1. Allege that plaintiffs have failed to state a claim upon which relief may be granted.

2. Allege that plaintiffs have failed to join the state of Minnesota and the State Department of Public Welfare as necessary parties to this action.

WHEREFORE, these answering defendants pray that plaintiffs take nothing by their complaint, that their complaint be dismissed and that defendants be awarded their costs and disbursements herein.

Dated: Ocotber 10, 1980.

TOM FOLEY
Ramsey County Attorney
By /s/ JANET R. STENBORG
Assistant Ramsey County Attorney
200 Lowry Square
Saint Paul, Minnesota 55102
Telephone: 298-4330
Attorneys for Defendants

PREAMBLE—MINNESOTA STATE CONSTITUTION

We, the people of the state of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this Constitution.

ARTICLE 1, §16—MINNESOTA STATE CONSTITUTION

§ 16. Freedom of conscience; no preference to be given to any religious establishment or mode of worship

Sec. 16. The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

M.S.A. §256B.02, Subd. 8(13) as defined therein:

"(13) Abortion services, but only if one of the following conditions is met: (a) The abortion is a medical

necessity. 'Medical necessity' means (1) the signed written statement of two physicians indicating the abortion is medically necessary to prevent the death of the mother, and (2) the patient has given her consent to the abortion in writing unless the patient is physically or legally incapable of providing informed consent to the procedure, in which case consent will be given as otherwise provided by law. (b) The pregnancy is the result of criminal sexual conduct as defined in section 609.342, clauses (c) (d), (e)(i), and (f), and the incident is reported within 48 hours after the incident occurs to a valid law enforcement agency for investigation, unless the victim is physically unable to report the criminal sexual conduct, in which case the report shall be made within 48 hours after the victim becomes physically able to report the criminal sexual conduct; or (c) The pregnancy is the result of incest, but only if the incident and relative are reported to a valid law enforcement agency for investigation prior to the abortion."

M.S.A. §256B.40:

"No medical assistance funds of this state or any agency, county, municipality or any other subdivision thereof and no federal funds passing through the state treasury or the state agency shall be authorized or paid pursuant to this chapter to any person or entity for or in connection with any abortion that is not eligible for funding pursuant to section 256B.02, subdivision 8."

M.S.A. §256B.011:

"Between normal childbirth and abortion it is the policy of the state of Minnesota that normal child-

birth is to be given preference, encouragement and support by law and by state action, it being in the best interests of the well being and common good of Minnesota citizens."

M.S.A. §145.925

* * * * *

Subd. 7. A grant recipient shall inform any person requesting counselling on family planning methods or procedures of:

(1) Any methods or procedures which may be followed, including identification of any which are experimental or any which may pose a health hazard to the person;

(2) A description of any attendant discomforts or risks which might reasonably be expected;

(3) A fair explanation of the likely results, should a method fail;

(4) A description of any benefits which might reasonably be expected of any method;

(5) A disclosure of appropriate alternative methods or procedures;

(6) An offer to answer any inquiries concerning methods or procedures; and

(7) An instruction that the person is free either to decline commencement of any method or procedure or to withdraw consent to a method or procedure at any reasonable time.

CFR §441.257 Informed consent.

(a) *Informing the individual.* For purposes of this subpart, an individual has given informed consent only if—

(1) The person who obtained consent for the sterilization procedure offered to answer any questions the individual to be sterilized may have concerning the procedure, provided a copy of the consent form and provided orally all of the following information or advice to the individual to be sterilized:

(i) Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment and without loss or withdrawal of any federally funded program benefits to which the individual might be otherwise entitled.

(ii) A description of available alternative methods of family planning and birth control.

(iii) Advice that the sterilization procedure is considered to be irreversible.

(iv) A thorough explanation of the specific sterilization procedure to be performed.

(v) A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used.

(vi) A full description of the benefits or advantages that may be expected as a result of the sterilization.

(vii) Advice that the sterilization will not be performed for at least 30 days, except under the circumstances specified in §441.253(c).